

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF CITY OF SAINT PAUL, MINNESOTA**

These Comments are filed by City of Saint Paul, Minnesota (Saint Paul) in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Saint Paul believes that local governments are not a barrier to entry into the video services market. In fact, Saint Paul recognizes the importance of broadband accessibility to the future of our city and currently has a study underway, the Broadband Impact Technology Study (BITS), which examines Saint Paul's broadband technology needs from four perspectives: businesses, residents, education and City operations. Upon completion in April, Saint Paul will be in a good position to explore initiatives it can undertake to encourage deployment of multiple broadband systems throughout the City.

In addition to Saint Paul's strong belief that it does not unreasonably refuse the granting of competitive franchises, Saint Paul also asserts that local franchising has a positive benefit for Saint Paul consumers, citizens and cable service providers.

In support of these beliefs, we wish to inform the Commission about the facts of cable franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Saint Paul, "The Capital City of Minnesota," has a population of approximately 275,000 people and awarded its first cable franchise in 1983 to Continental Cablevision.

**Saint Paul's Current Franchise**

Our current franchise began in July, 1998 and expires in July, 2013. Our current franchised cable provider is Comcast. The franchise requires the cable operator pay a 5%

franchise fee to the City of Saint Paul based on the gross revenues of the operator, in accordance with the Federal Cable Act.

### **PEG Access**

Through Saint Paul's ability to first identify, and then negotiate with the original cable provider and subsequent franchise transfers over the past twenty years, Saint Paul has been able to satisfy many critical local community needs and interests related to public, educational and government ("PEG") use of the cable system. We have used funding and in-kind benefits received from the cable operator (along with our own funds) to build nationally recognized PEG operations, both through the City of Saint Paul, as well as through Saint Paul's non-profit organization, the Saint Paul Neighborhood Network (SPNN). The cable franchise required the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels initially: 3 channels (or capacity) devoted to public access; 1 channel (or capacity) devoted to educational access; 1 channel (or capacity) devoted to religious access; and 1 channel (or capacity) devoted to government access. However, the franchise also permits the City to obtain additional channels if certain programming triggers are satisfied, and to take advantage of digital technologies as those develop. These provisions allow PEG use to evolve with technology and demand.

Through franchise negotiations, Saint Paul and the cable operator agreed that the company will provide funding support in the following ways:

- On the effective date of the franchise, and on the third and seventh franchise anniversaries, the cable provider will provide capital grants of \$500,000, and \$250,000 on the eleventh anniversary, all in 1997 dollars;
- Each year the cable operator will provide a \$50,000 grant in 1997 dollars; and
- The company will provide an annual payment of \$630,000, based on 1997 dollars directly to SPNN. The cable operator entered into an independent agreement with the City's access corporation, SPNN, to provide operating support for public access. Because that arrangement benefits the City, the City actually reduces the amount the company would otherwise owe each year to recognize the contribution made to SPNN.

In 2006, Comcast started to pass-through to the subscriber a monthly PEG Fee of \$1.50, in order to recoup their PEG payment franchise requirements.

### **Institutional Networks**

As a direct result of the City of Saint Paul's ability to work with the cable service provider to meet our local needs, Saint Paul has a 200-mile institutional network (INet) that provides substantial cost savings for video and data telecommunication services to over 100 city, county, state and educational department and agency sites. While the INet is owned and managed by the cable service provider, the City works with Comcast in a cooperative venture to ensure that the HFC/Fiber system continually meets our local needs. It has been estimated that the INet saves the City of Saint Paul over \$350,000 annually by reducing costs for transmission of data. Additionally, there is a dedicated video channel that carries fire and other training video programs to the City's departments and buildings that are miles apart. The INet also allows the

remote carriage of meetings, events and other local activities to its residents, who might not otherwise be able to watch them as they happen. Not every community would have had the same INet requirements as St. Paul, which (as the capital of the State) hosts a large concentration of government and educational facilities.

### **Emergency Override**

An important aspect of Saint Paul's franchise is the emergency override requirements, which states the company shall provide and maintain all equipment and capacity necessary to allow for an audio and visual override on all channels simultaneously for public emergency announcements by the city. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

### **Customer Service**

Many may argue that in a true competitive environment, regulation of customer service is unnecessary as disgruntled consumers can elect to simply go elsewhere. However, whatever the merits of that argument in a market where there are many, many comparable alternatives and where it is easy to shift from one provider to another, the argument does not hold with respect to cable. In most instances today, with only one land-line cable operator in most cities, and dish TV service as the only other choice, customers have limited options. Even when competition takes root, in most cases there will probably never be more than two, at best three, competitors. It is also unknown what service territories would each company serve, the entire city, or a smaller section. As economics 101 would argue, the situation of having only two or three services to choose from would either be a duopoly, or a triopoly, and therefore provide only variations of the same services and limited competition. Therefore, local government will still have a role in assisting their residents by remaining customer service advocates as they continue to help resolve disputes, just as Saint Paul's Cable Communications Office does today with resolving an average approximately 100 complaints annually. This figures does not include the actual number of calls the City receives on a daily basis regarding information and answering questions from City residents.

### **Local Regulatory Powers**

A prime example of how the City of Saint Paul's franchise regulatory powers proved its worth concerned the cable company's failure to meet the national electrical and safety codes, not once ... but twice. After the previous cable operator AT&T Broadband, now Comcast, completed the upgrade of its cable plant infrastructure in 2002 the City conducted a field inspection audit of the cable system to ensure it met local, state and national safety and electrical codes. It did not. After giving the company a year to correct the problems, the company again failed to pass a mutually agreed test for compliance. Finally, after months of negotiations, and allowing the company time to correct construction mistakes, Comcast passed the audit. Without the penalty provisions of our local cable franchise, and a local regulatory authority that ensured the locally franchised operator met safety standards, Saint Paul's residents, even non-cable consumers, could have been at risk.

## **Service Area**

Our current franchise requires that the cable operator provide service to the entire area of the City of Saint Paul as it exists and as its borders may from time to time be changed. It requires that the company shall provide cable service throughout the entire franchise area. That requirement was established in light of cable's history in our community, and in light of characteristics that make full build-out economic.

## **Rights-of-Way**

The City's cable franchise, ordinance and legislative code govern cable operator access to the public rights of way and compatible easements for the purpose of providing cable service. The cable provider, just as all those who work in the City's rights-of-way, are required to follow Saint Paul's Legislative Codes, Chapters 116 and 135. These two chapters of the Code were adopted in 1996 and amended in 2000 as a direct result of extensive disruption to the City's rights-of-way from numerous telecommunications providers. The Code "recognizes that it [City of Saint Paul] holds the rights-of-way within its geographical boundaries as an asset in trust for its citizens ... [and the] lack of competence and qualifications of persons who work in the right-of-way has caused substantial public inconvenience, substantial safety risks for the public, and has unduly restricted public use of the right-of-way." The two chapters provide a comprehensive blueprint for all those who use the rights-of-way, including the process for working in the ROW, the fees based on actual costs including degradation restoration, and the general management of the rights-of-way in order to protect the public health, safety and welfare.

## **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible to do so. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

## **Changes in Law and Effect on Franchise**

Our current franchise addresses changes in law which affects the rights or responsibilities of either party under this franchise agreement, consistent with our recognition that the franchise is a contract which was intended to confer a certain level of benefits on both parties. The franchise provides that, "[i]f the city determines that a material provision of this ordinance is affected by any subsequent action of the state or federal government, or by any order of a court or agency of competent jurisdiction; or in the event the company raises a claim or defense that a material provision is void or otherwise unenforceable in accordance with its terms, the city shall have the right to modify any of the provisions herein to such reasonable extent as may be necessary to carry out the full extent and purpose of this agreement, provided such modifications

do not place any greater total financial obligations on the company than were required under this ordinance prior to the action of the state or federal government, or the order by the court or agency, or the date the claim was raised. By way of example, and not limitation, if requirements for system design are ever determined to be unenforceable, the city could increase the company's obligations with respect to PEG access or the institutional network to an amount equal to the savings to the company that result from the state or federal government action.”

### **Competitive Cable Systems**

As noted in our opening comments, Saint Paul supports competition and welcomes the opportunity to negotiate new competitive agreements to serve our community when we complete the BITS study this spring. In fact, as a result of the City's noted interest in exploring broadband options for Saint Paul, several competitive providers have expressed interest to the City about possible future broadband opportunities. Saint Paul looks forward to exploring competitive options for our community and stands ready to set reasonable and realistic schedules for new entrants to provide their services to our residents.

In addition to what lies ahead for Saint Paul, the City previously received two solicitations for cable franchises in 2000. Both Wide Open West and Everest Communications filed applications to overbuild the Saint Paul community. Both had different concerns; both wanted franchises that differed from the franchise held by the incumbent, and the franchise sought by the other applicant. This is not surprising, as each applicant can be expected to have a slightly different business plan. In an effort to create comparable but not identical competitive franchises to the incumbent's franchise, the City developed guidelines that will assist them with future applications negotiations began negotiations with both WOW and Everest. Unfortunately, before negotiations could be completed, both companies determined that their business plans and markets were changing and pulled their applications from consideration. However, our experience suggested that rigid guidelines for reviewing and granting or denying licenses would have delayed, rather than encouraged competitive entry. It was important for the City to be in a position to develop fair franchises that would serve the interests of the City and the incoming applicants. It was also important for the City to be in a position to defer more formal administrative actions while discussing issues with applicants informally; informal discussions were sought by both applicants.

### **Conclusions**

Lost in the discussion at the federal level of whether local governments can provide an expeditious platform for the roll-out of competitive services, is the simple fact that City of Saint Paul has been for over 150 years handling local planning, building, zoning, construction, real estate and rights-of-way issues. Cities have the expertise to expeditiously review, examine, negotiate and process 50-story office buildings applications, as well as a single family home application. Cities understand that not each application is the same, in fact, almost all applications are unique in some regards. Applications to provide cable services are the same. Cities know far better how a new competitor is going to affect the use of its rights-of-way. Cities understand what local systems will provide the best complement or embellishment to the existing community's communications operations, and can avoid unnecessary or duplicative

requirements, and informally devise fair ways multiple entrants can work together to satisfy cable-related needs and interests. Cities can address these and other local issues such as health, safety and welfare much faster than at any other level.

The local cable franchising process functions well in Saint Paul, Minnesota. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

The City has adopted and enforces the FCC customer service standards, has an established complaint procedure in place, requires the cable company to maintain a local presence, and conducts other customer service activities such as rate regulation, to ensure local needs are met. It would be impossible for a national franchising administration to handle local customer service issues.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest, even assuming it is legal to do so.

Finally, local franchises allow each community, including Saint Paul's, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Saint Paul, Minnesota therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

  
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